



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-190
<b>Regulation title</b>	General VPDES Permit Regulation for Nonmetallic Mineral Mining
<b>Action title</b>	Reissue Existing Regulation
<b>Final agency action date</b>	
<b>Document preparation date</b>	March 17, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This rulemaking is proposed in order to reissue the existing general permit which expires on June 30, 2009. The general permit will establish limitations and monitoring requirements for point source and storm water discharges from non-metallic mineral mining facilities.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On April 27, 2009, the State Water Control Board voted unanimously to adopt 9 VAC 25-190, General VPDES Permit Regulation for Non-Metallic Mineral Mining.

## Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability, including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation will have no direct impact on the institution of the family or family stability.

## Summary of Public Hearing and Public Notice Comments Received on the VPDES General Permit for Non-Metallic Mineral Mining 9 VAC 25-190

No comments were received during the public hearing. Mark Williams, Luck Stone; Ed Dalrymple, Cedar Mountain Stone and Sam Hollins, VA Transportation Construction Alliance provided signed cards to allow them to address the Board at the April Board meeting if they wish.

No comments were received from the public during the public notice comment period.

Below are comments received from EPA and the agency response.

- EPA Comment: The revised regulation (9VAC25-190-50, Authorization to discharge) directs that the Board shall deny coverage where there is a reasonable expectation that the discharge will cause or contribute to Water Quality Standard (WQS) exceedance. However, the permit does not prohibit the same. It is essential that a provision be added to the permit prohibiting discharges that cause or contribute to a violation of WQS or that adversely affect aquatic life. In other words, the permit must be consistent with 40 C.F.R. § 122.44(d) & § 122.4(d).  
DEQ Response: The general permit has been modified to include this requirement.
- EPA Comment: As written, the TMDL language is limited to those cases where the TMDL specifically identifies the facility. Almost every TMDL assigns an allocation to the general permit and not to specific facilities discharging under the general permit. It is strongly recommended that the language be taken out of both the regulation (9VAC25-190-50) and the permit (Part B, special condition 14). The permit should simply require that any SWPP be consistent with the assumptions and requirements of any applicable TMDL per 40 CFR 122.44(d)(1)(vii)(B), whether or not the facility is specifically included in the TMDL.  
DEQ Response: The TMDL language has been revised to remove the reference to an “identified facility” in the regulation and general permit.
- EPA Comment: It is not clear why the MS4 language on page 17 is crossed out. The permittees should be required to make sure their SWPPs are consistent with the requirements of any MS4 permit.  
DEQ Response: The MS4 language was crossed out to be consistent with the EPA final 2008 Multi-sector General Permit (MSGP) which no longer contains the requirement for consistency with MS4 SWPPs.
- EPA Comment: It is recommended that a Termination clause be incorporated into the permit consistent with Section 1.4.2 of the Multi-sector General Permit (MSGP) such as: You must submit a Notice of Termination within 30 days after one or more of the following conditions have been met:  
A new owner or operator has taken over responsibility for the facility; or

You have ceased operations at the facility, there are not or no longer will be discharges of stormwater associated with industrial activity from the facility, and you have already implemented necessary sediment and erosion controls as required by Part 2.1.2.5;

You are a Sector G, H, or J facility and you have met the applicable termination requirements; or

You have obtained coverage under an individual or alternative general permit for all discharges required to be covered by an NPDES permit, unless EPA has required that you obtain such coverage under authority of Part 1.6.1, in which case coverage under this permit will terminate automatically.

DEQ Response: Termination language has been added to the general permit.

- EPA Comment: The permit should define how Virginia will implement its anti-degradation policy in the context of this permit. The following anti-degradation language is included in EPA's MSGP.

1.1.4.8 New Discharges to Waters Designated as Tier 3/Exceptional State Waters for Antidegradation Purposes. If you are a new discharger, you are not eligible for coverage under this permit for discharges to waters designated by the State as Tier 3 (Exceptional State Waters) for antidegradation purposes under 40 CFR 131.13(a)(3) (see list of Tier 3 waters on EPA's website at <http://www.epa.gov/npdes/stormwater/msgp>).

2.2.3 Tier 2 Antidegradation Requirements for New or Increased Dischargers  
If you are a new discharger, or an existing discharger required to notify EPA or the state of an increased discharge consistent with Part 7.4 (i.e., a "planned changes" report), and you discharge directly to waters designated by the State as Tier 2 or Tier 2.5 for antidegradation purposes under 40 CFR 131.12(a) (see list of Tier 2 and 2.5 waters on EPA's website at <http://www.epa.gov/npdes/stormwater/msgp>), EPA or the state may notify you that additional analyses, control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part 1.6.1.

DEQ Response: To address the requirements of Virginia's antidegradation policy language has been added to the general permit in 9VAC25-190-50 (Authorization to Discharge).

- EPA Comment: In Part I A 4 of the VA permit, it indicates that samples ... "shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude." Section 6.1.3 of the EPA multi sector permit indicates that...

All required monitoring must be performed on a storm event that results in an actual discharge from your site ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (3 days). The 72-hour (3-day) storm interval does not apply if you are able to document that less than a 72-hour (3-day) interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at your site.

Please incorporate this language into the permit.

DEQ Response: Similar language has been added to the general permit.

- EPA Comment: Part II C 2 Inactive and unstaffed facilities. The following comment should be added to the narrative: “The requirement for a quarterly visual assessment does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater.” [40 CFR 122.26(g)(4)(iii)]  
DEQ Response: This language has been added to the general permit.
  
- EPA Comment: Monitoring Requirements for Total Petroleum Hydrocarbons (TPH): In the VAG84 permit, the permittee is required to monitor for TPH quarterly for outfalls from vehicle/equipment washing facilities or from discharges that pass through oil/water separators. It is suggested that a reference benchmark concentration/action level be established in the permit so that exceedances of this benchmark would prompt the operator to modify onsite Best Management Practices (BMPs) to reduce the discharge(s) of TPH to waters of the state.  
DEQ Response: DEQ has not been able to identified EPA or other states benchmark level for TPH for these activities. If more information becomes available in the future DEQ will consider establishing benchmark requirements in the next permit reissuance.
  
- EPA Comment: Registration Information

The VA registration form was compared with EPA’s Notice of Intent (NOI) for the MSGP. Based on this review, it was noted that the Virginia should request the following information from the applicant.

- Does the facility discharge stormwater into a Municipal Separate Storm Sewer System (MS4)? If yes, name the MS4 operator.
- DEQ Response: The registration information has been revised to address this issue.
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- Identify discharges to receiving waters (already included) and wetlands.
- DEQ Response: The registration information has been revised to address this issue.
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- Provide name(s) of receiving waters that receive stormwater directly and/or through an MS4.
- DEQ Response: Receiving stream (including wetlands) information already provides this information.
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- Identify if the receiving water is impaired according to the State’s 303d list and identify the name of the impaired segment, if applicable.
- DEQ Response: DEQ will determine this based upon the registration statement submitted and notify the applicant.
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- Identify pollutant(s) causing the impairment.
- DEQ Response: DEQ will determine this based upon the registration statement submitted and notify the applicant.
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- State whether the pollutant(s) causing the impairment are present in the discharge.

- DEQ Response: DEQ will determine this based upon the registration statement submitted and notify the applicant.
- Identify whether a TMDL been completed for the pollutant(s) causing the impairment.
- DEQ Response: DEQ will determine this based upon the registration statement submitted and notify the applicant.